

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES, DERIVATIVE & ERISA  
LITIGATION

IN RE WASHINGTON MUTUAL, INC.  
ERISA LITIGATION

## ORDER ON MOTION TO DIRECT ENTRY OF FINAL JUDGMENT

This Document Relates to:  
ALL CASES

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2:08-MDL-1919 MJP — 1

## Background

On October 5, 2009, the Court granted in part and denied in part Defendants' motions to dismiss. (See Dkt. No. 362.<sup>1</sup>) All Defendants joined the Committee Defendants' argument that the WaMu Plan's design required fiduciaries to preserve common stock as an investment option. (Id. at 10.) The Court denied Defendants' motion, reasoning that the terms of the Plan contemplated the Plan Investment Committee's authority to remove investment funds, including the Common Stock Fund. (Id. at 12.) The Court did, however, grant Chase's motion to dismiss because Plaintiffs had failed to posit a plausible theory of successor liability. (Id. at 23.) Plaintiffs move for entry of partial judgment under Rule 54(b) and the Committee Defendants filed a conditional cross-motion for interlocutory appeal.

## Discussion

Rule 54(b) provides, in pertinent part:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay . . . .

Fed. R. Civ. P. 54(b). Under Rule 54(b), a district court must “first determine that it is dealing with a ‘final judgment’” and, if it finds finality, “determine whether there is any just reason for delay.” Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 7-8 (1980). In analyzing whether there is a “just reason for delay,” a court must consider “judicial administrative interests as well as the equities involved.” Id. at 8. In Curtiss-Wright, for instance, the district court had analyzed whether “the claims finally adjudicated were separate, distinct, and independent of any of the other claims or counterclaims involved; that review of these adjudicated claims would not be mooted by any future developments in the case; and that the nature of the claims was such that no appellate court would have to decide the same issues more than once even if

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<sup>1</sup> The Court does not provide an extensive factual recitation in today's Order. For a more complete description of the parties and allegations, the Court references the summary provided in the Order on the motions to dismiss. (Dkt. No. 362 at 3-7.)

1 there were subsequent appeals.” Id. at 6. The question of whether entry of judgment will  
2 “streamline the ensuing litigation” is of particular importance under Rule 54(b). Texaco, Inc. v.  
3 Ponsoldt, 939 F.2d 794, 798 (9th Cir. 1991) (even where remaining claims required proof of  
4 same facts, entry of judgment was appropriate because the legal and factual issues were  
5 distinct); Continental Airlines, Inc. v. Goodyear Tire & Rubber Co., 819 F.2d 1519, 1525 (9th  
6 Cir. 1987) (approving court’s decision to “carve out threshold claims and thus streamline  
7 further litigation”); Noel v. Hall, 568 F.3d 743, 747 (9th Cir. 2009) (Rule 54(b) judgment  
8 appropriate where an appellate court’s ruling may free a party from litigation and streamline  
9 later litigation).

10 In this matter, the legal theories applicable to Chase are not entirely distinct from those  
11 relating to other Defendants. Though the Court dismissed Chase because Plaintiffs’ theory of  
12 successorship liability was untenable, Chase advanced a number of other arguments which  
13 could be revived on appeal. See Hell’s Angels Motorcycle Corp. v. McKinley, 360 F.3d 930,  
14 933 (9th Cir. 2004). In particular, Chase could argue that dismissal was appropriate because  
15 the Plan required the fiduciaries to provide WaMu common stock as an investment option.  
16 (See Dkt. No. 362 at 12.) The Ninth Circuit could decide the issue on a legal basis applicable  
17 to all Defendants, even if Chase were the only Defendant presenting the argument. Unlike the  
18 scenario in Texaco, issues that lie at the core of the claims against the remaining Defendants  
19 could be simultaneously litigated in this Court and at the Ninth Circuit.

21 The Court recognizes the potential for a significant delay in this matter if judgment is  
22 not entered—the ERISA trial is scheduled for July 16, 2012. (See Dkt. No. 392.) The Court is  
23 scheduled to hear argument on Plaintiffs’ motions for class certification this summer. Under  
24 Rule 23(f), either Plaintiffs or Defendants may appeal the Court’s ruling on class certification.<sup>2</sup>  
25 See Fed. R. Civ. P. 23(f). Should the Court enter judgment against Chase at that time, the  
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27 <sup>2</sup> The Court is careful to note that it is neither encouraging nor discouraging the parties to  
appeal any future ruling on class certification.

1 Court of Appeals would be able to address the legal issues common to all Defendants at one  
2 time. In the Court's view, this scenario presents the most streamlined path to an efficient  
3 resolution of this matter. The Court's denial of Plaintiffs' motion is therefore without prejudice  
4 to bring a renewed motion after the Court rules on the anticipated motions for class  
5 certification.

6 The Committee Defendants couched their motion as a "conditional" that should only be  
7 considered if the Court granted Plaintiffs' Rule 54(b) motion. (Dkt. No. 372 at 2.) Because the  
8 Court denies Plaintiffs' motion today, the Court finds as moot the Committee Defendants'  
9 motion.

### 10 **Conclusion**

11 The Court believes that the present posture of the case makes the entry of judgment  
12 inappropriate. In particular, the risk of parallel arguments before this Court and the Ninth  
13 Circuit on identical legal issues is worrisome. The Court therefore DENIES Plaintiffs' motion  
14 for entry of judgment against Chase (Dkt. No. 366) without prejudice to bring a renewed  
15 motion after the Court rules on class certification. The Court FINDS AS MOOT the  
16 Committee Defendants' conditional cross-motion (Dkt. No. 372) for interlocutory appeal. The  
17 Clerk is directed to transmit a copy of this Order to all counsel of record.

18 Dated this 11th day of January, 2010.

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22 Marsha J. Pechman  
23 United States District Judge  
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